

Department of Legislative Services  
 Maryland General Assembly  
 2015 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 638 (Delegates Holmes and Frush)  
 Environment and Transportation

Natural Resources - Oysters - Shell Seeding, Shell Replenishment, and Rotational Harvest

This bill establishes “county commercial oyster committees,” which are given specified authority and/or responsibility regarding the use of oyster surcharge and tax revenues and the establishment of oyster harvest management and propagation measures in county waters under the committees’ jurisdiction. With the exception of four specified oyster sanctuaries, oyster sanctuaries and harvest reserve areas cease to exist and, from November 1 through the end of the oyster season, power dredging is allowed on any natural oyster bar in the State, with specified exceptions. The Department of Natural Resources (DNR) must establish specified public seed areas from which seeded shell may be moved to less productive areas.

The bill takes effect July 1, 2015.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$631,600 in FY 2016 to mark natural oyster bars under county commercial oyster committees’ jurisdiction. Future years reflect annualization and inflation. Special fund oyster surcharge and tax revenues increase in the near term, but subsequently decline in future years. Federal fund revenues for oyster restoration efforts may decrease.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	-	-	(-)	(-)	(-)
FF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$631,600	\$281,100	\$289,700	\$298,600	\$307,900
Net Effect	(\$631,600)	(\$281,100)	(\$289,700)	(\$298,600)	(\$307,900)

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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## **Analysis**

### **Bill Summary:**

#### *County Commercial Oyster Committees*

The bill repeals existing provisions governing the membership of county oyster committees and establishes new provisions for five-member “county commercial oyster committees,” with representation of harvesters using each of the four gear types (hand tongs, patent tongs, diving apparatus, and power dredging) and one at-large member who may use any allowable harvest method. If a county does not have sufficient candidates to represent each gear type, the committee may include more than one member for a particular gear type. A committee may consist of as few as three members if there are fewer than five licensed oyster harvesters in a county willing to serve on a committee. The members select the chair of the committee. The bill specifies an election process for determining the committee members, held at an advertised public meeting. Committee members serve three-year terms.

#### *Authority and Responsibilities of Committees*

##### *Rotational Harvest*

Beginning in 2021, on or before August 1 of each year, each county commercial oyster committee must develop and submit to DNR a “rotational harvest plan” for the natural oyster bars in county waters under the committee’s jurisdiction. DNR must adopt regulations implementing the rotational harvest plans and annually publish maps and coordinates of areas closed to harvest as a result of a designation by, or a request of, a committee. A rotational harvest plan:

- must designate for closure during the upcoming oyster season approximately 20% of the natural oyster bars under the committee’s jurisdiction that yielded harvests of 50 bushels of more during the preceding three oyster seasons;
- may limit the times or days for power dredging on any natural oyster bar under the committee’s jurisdiction; and
- may limit the gear a person may use to harvest oysters on any natural oyster bar under the committee’s jurisdiction.

An oyster committee must use specified markers to mark any natural oyster bars closed to harvesting or subject to special harvest restrictions under a rotational harvest plan. DNR may mark the natural oyster bars on behalf of the oyster committee.

Prior to 2021, at the request of an oyster committee, DNR may close up to 20% of the natural oyster bars under the oyster committee's jurisdiction to power dredging.

In addition to any other applicable penalty, a person who unlawfully takes oysters from an area closed to harvest by a county commercial oyster committee when the area is designated and marked or the person knew or should have known that taking the oysters from the area was unlawful, is subject to a fine of up to \$3,000.

#### *County Planting and Propagation Areas*

An oyster committee may designate any natural oyster bar in county waters under the committee's jurisdiction that is open to dredging as (1) a "county planting area," if the natural oyster bar is determined to be naturally unproductive or (2) a "county propagation area," if the natural oyster bar is determined to be naturally productive. The designated bars must be clearly marked. DNR must adopt regulations implementing the designations. A process is established allowing licensed oyster harvesters to move oyster shell from a county planting area to a county propagation area to allow natural spat to strike on the shell and begin to grow. Licensed oyster harvesters may then, during a specified period of time, move up to 80% of seeded shell from the county propagation area back to the county planting area. A licensed oyster harvester must give DNR specified notice of a transplanting at least 14 days beforehand.

#### *Oyster Surcharge and Tax Revenue*

Revenues from (1) the annual surcharge paid by a person who catches oysters for sale and (2) per bushel oyster severance and out-of-state shipping inspection taxes must be used only to fund the shell seeding and shell replenishment activities of the county commercial oyster committees. DNR must evenly distribute the revenues to each oyster committee. By May 15 of each year, DNR must provide an annual accounting to each committee of the total amount of revenues collected during the previous fiscal year and the funds available for use by the committee. Within 30 days of a written request by the chair of an oyster committee, DNR must pay to any person indicated in the request all or a portion of the funds being held for the committee.

### *Oyster Sanctuaries and Harvest Reserve Areas*

With the exception of the Harris Creek, Little Choptank River, Oxford Laboratory, and Sandy Hill oyster sanctuaries, as defined by DNR regulations in effect January 1, 2015, all oyster sanctuaries and harvest reserve areas cease to exist under the bill.

### *Power Dredging Limits*

With specified exceptions, the bill authorizes a person to use a power dredge to harvest oysters from any natural oyster bar in the State from November 1 to the end of the oyster season. The exceptions (areas in which a power dredge may *not* be used) include the Atlantic Coastal Bays; aquaculture or demonstration lease areas (except as authorized under aquaculture provisions); areas closed to power dredging by a county commercial oyster committee; areas closed to shellfish harvest by the Maryland Department of the Environment; and the Harris Creek, Little Choptank River, Oxford Laboratory, and Sandy Hill oyster sanctuaries. An existing provision requiring DNR to set aside certain waters of the State to be used exclusively by hand tongs to catch oysters is repealed.

From the 2015-2016 oyster season through the 2018-2019 oyster season, DNR must authorize a person to use a power dredge to harvest (1) at least 6 bushels of oysters per day from any natural oyster bar that was closed to power dredging during the 2014-2015 oyster season and (2) at least 10 bushels of oysters per day from any natural oyster bar that was open to power dredging during the 2014-2015 oyster season.

Beginning in the 2019-2020 oyster season, DNR must authorize a person to use a power dredge to harvest not less than 10 bushels of oysters per day from any natural oyster bar that is open to power dredging.

### *Public Seed Areas*

By May 15 of each year, DNR must designate several of the most productive natural oyster bars as “public seed areas,” based on harvest reports from the preceding oyster season. DNR must designate one month during the closed season for harvesting oysters when licensed oyster harvesters may move seed oysters from the public seed areas to less productive natural oyster bars. DNR must adopt regulations to implement the public seed area provisions, must limit by regulation the total quantity of shell seed that may be removed from a public seed area in a year, and may establish by regulation procedures for verifying that seed shell is transplanted only in accordance with the public seed area provisions. A licensed oyster harvester must give DNR specified notice of a transplanting at least 14 days beforehand. The public seed areas must be designated as shown in **Exhibit 1**.

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**Exhibit 1**  
**Designation of Public Seed Areas Under the Bill**

**Designated in ...**

**... to provide shell seed for natural oyster bars in ...**

Southern Anne Arundel,  
Calvert, Dorchester, and  
Talbot counties

Northern Anne Arundel, Baltimore, Harford, Kent, and  
Queen Anne's counties

St. Mary's, Somerset, and  
Wicomico counties

Southern Anne Arundel, Calvert, Dorchester, and  
Talbot counties

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*Oyster Shell*

The bill authorizes a licensed oyster harvester to (1) obtain shell from oysters of the species *Crassostrea Virginica* from a licensed oyster dealer, shucking house, shell collection program, or any other source and (2) deposit the shell in any public shellfish fishery area. The licensed oyster harvester must provide DNR with specified information regarding the shell and the planned deposit of the shell at least 14 days before depositing the shell. A licensed oyster dealer that engages in shucking oysters must also report at least once each year on the quantity and disposition of shell produced in the preceding year. DNR is authorized to adopt implementing regulations.

**Current Law/Background:**

*County Oyster Committees*

DNR must have licensed oystermen in each tidewater county of the State select committees of oystermen to confer with DNR concerning oyster propagation conducted by the department in each county. The term of the membership of each committee is four years, and DNR may prescribe by regulation the time, place, and manner of selection of the oyster committees.

*Oyster Surcharge and Tax Revenue*

A person who catches oysters for sale must pay an annual surcharge of \$300 and the revenue must be used by DNR only for oyster repletion activities.

A severance tax of \$1 is levied on every bushel of oysters caught within the limits of the natural oyster bars of the State, excluding the Potomac River. An inspection tax of

30 cents per bushel is levied on marketable oysters shipped in the shell outside the State. Oyster severance and inspection tax revenue is credited to DNR's Fisheries Research and Development Fund and is used only for the repletion of the State's natural oyster bars. A certain portion of those revenues is limited to use for an oyster seed program.

As required by statute, oyster surcharge and tax revenues are used by DNR for oyster repletion activities (placing shell that has gone through a hatchery on a public oyster fishery bottom, placing shell directly on a public oyster fishery bottom for natural production, or dredging and moving shell to a public oyster fishery bottom). The funding is used based on recommendations of the county oyster committees, but subject to DNR's approval. DNR indicates that the funding is currently distributed based on the proportion of surcharge and tax revenues generated from each county.

### *Oyster Restoration and Oyster Fishery Management*

In response to the oyster population in the Chesapeake Bay languishing at 1% of historic levels, decreased suitable oyster habitat, and a dwindling number of harvesters, DNR unveiled a new management and restoration plan for oysters and the State's oyster industry in December 2009. The plan increased the State's network of oyster sanctuaries from 9% to 24% of the bay's remaining quality oyster bars, established oyster aquaculture leasing opportunities and related financial assistance programs, and maintained 76% of the bay's remaining quality oyster habitat for a public oyster fishery.

#### *Restoration*

DNR's oyster restoration activities include the construction of restored oyster reefs, oyster production, and the promotion of oyster aquaculture. The restoration activities are funded largely with capital general obligation bond funding (\$7.6 million annually). There are 51 sanctuaries in the Maryland sanctuary network, with varying quality of oyster habitat. Restoration efforts are currently focused on the Harris Creek and Little Choptank River sanctuaries, chosen based on oyster population assessment, water quality, substrate conditions, and other factors.

#### *Fishery Management*

DNR manages the public oyster fishery through various means, including zoning of public shellfish fishery areas to allow for specific oyster harvest gear to be used in specific areas based on the ability of areas to withstand harvest pressure. With respect to power dredging, statute specifies certain areas in which catching oysters by dredge is prohibited and DNR regulations more broadly prohibit the use of power dredges, except in defined areas in the lower Chesapeake Bay.

DNR is authorized to establish harvest reserve areas intended to allow for both ecological oyster restoration and periodic harvesting. DNR indicates, however, that there is currently limited activity with regard to the harvest reserve areas, which are opened to harvest for short periods of time to the extent there are oysters available.

*Fresh Oyster Shell*

There is a limited amount of fresh oyster shell (from shucking houses) available for oyster restoration, aquaculture, and the public oyster fishery in the State. DNR estimated in 2014 that 120,000 to 200,000 bushels of shell can be purchased annually from shucking houses in Maryland and Virginia, which is less than the demand for fresh shell in the State.

**State Fiscal Effect:**

*Implementation of Oyster Committee Management Measures*

General fund expenditures increase by \$631,644 in fiscal 2016 in order to mark natural oyster bars under each county commercial oyster committee’s jurisdiction. This estimate is based on an assumption that committees request that DNR mark up to 20% of the natural oyster bars under a committee’s jurisdiction once during a commercial harvest season, from October through March. It accounts for the bill’s July 1, 2015 effective date and reflects the cost of hiring two hydrographic engineers and a painter and costs to purchase 813 buoys and a boat, truck, and trailer. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

DNR indicates that the committees do not have the authority from the U.S. Coast Guard to set buoys, so DNR must set the buoys on the committees’ behalf. Setting the buoys is the responsibility of DNR’s Hydrographic Operations Division, and an increase of 813 buoys represents a 40% increase in the existing number of buoys, requiring additional personnel and equipment to handle the workload. It is assumed, for the purposes of this fiscal and policy note, that the additional resources are supported with general funds since use of special funds from the Waterway Improvement Fund, the Hydrographic Operations Division’s current funding source, would divert funding from existing infrastructure needs.

Positions	3
Salaries and Fringe Benefits	\$167,484
Buoys	284,550
Boat, Truck, Trailer	145,000
Other Operating Expenses	<u>34,610</u>
<b>FY 2016 State Expenditures</b>	<b>\$631,644</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

### *Oyster Surcharge and Tax Revenues*

Special fund revenues generated from the oyster surcharge and taxes may increase to the extent the bill's changes result in a greater amount of power dredging – a more efficient type of harvesting gear than other methods. DNR indicates that there may be a short-term increase in oystermen entering the fishery to power dredge and in the amount of oysters harvested, but the increase is expected to not be sustainable beyond two years and to lead to a long-term decline in oyster harvest and associated special fund revenues. In fiscal 2014, \$826,956 was collected in oyster surcharges and taxes.

### *Oyster Restoration Funding*

The bill affects DNR's Oyster Restoration Program by eliminating all but four oyster sanctuaries and potentially limiting the amount of fresh shell available for hatchery production to the extent more shell is allocated to direct placement on natural oyster bars at the request of county commercial oyster committees. Limitation of DNR's ability to undertake restoration efforts involving placing hatchery-produced spat on shell in sanctuaries affects the viability of the Oyster Restoration Program and may reduce or eliminate federal funding for the program. DNR indicates that the elimination of all but the four sanctuaries will also prevent the State from meeting its oyster restoration commitments to the 2014 *Chesapeake Bay Watershed Agreement*. The agreement was signed by the Chesapeake Executive Council, committing the signing partners to a set of goals to advance the restoration, conservation, and protection of the Chesapeake Bay, its tributaries, and surrounding lands.

**Small Business Effect:** Certain licensed oyster harvesters are expected to benefit from reduced harvest restrictions under the bill and larger harvests in the near term. However, other harvesters that use less efficient gear types than power dredges, and ultimately power dredge harvesters as well, are negatively impacted by the increased harvest and resulting lower densities of oysters in the long term. To the extent the bill prevents use of oyster surcharge and tax revenues for purchase of hatchery-produced spat on shell, licensed oyster harvesters are negatively impacted by elimination of an effective method of oyster repletion.

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## **Additional Information**

**Prior Introductions:** None.



**Cross File:** None.

**Information Source(s):** Department of Natural Resources, University System of Maryland, Chesapeake Bay Program, Department of Legislative Services

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